

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
)
V.)
)
)
SAMUEL A. ASHLEY JR.)
)
Defendant.)
)

Case No. 1:04 CV 689
Criminal No. 1:02-CR-22

Chief Judge Beckwith

DEFENDANT'S REPLY TO THE GOVERNMENT'S
RESPONSE TO THE DEFENDANT'S AMENDMENT TO
\$2255 MOTION

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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION
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Now comes the defendant, Sam Ashley, pro se, who respectfully responds to the government's reply to the amended \$2255 motion that the defendant has filed.

First, the defendant's sentence had not yet been rendered final when the **Blakely** decision was announced. The defendant asked for an En Banc hearing on his direct appeal. That request was denied, then the defendant asked for more time to file his writ to the United States Supreme Court. That request was granted by the Clerk Of The Supreme Court, who sent the defendant all of the paperwork and forms to file an out of time writ.

In fact, the defendant was not sentenced in June of 2000, when the Supreme Court decided *Apprendi*. *Apprendi* was decided several years before the defendant was sentenced. Every case, (*Ring V. Arizona*, *Blakely*, *Booker*, *Fanfan*) all reaffirmed *Apprendi*. Therefore, the defendant certainly satisfies the time requirements.

The government does however state that Ashley did in fact enter

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a guilty plea to 2 counts of mail fraud and 1 count of income tax evasion, however, the defendant never admitted any obstruction of justice, more than 50 victims, abuse for being a charity, or that the loss amount was over one million dollars, or that he was the leader and organizer of the mail fraud.

The Supreme Court in Booker says that reviewing courts will need to look at each and every case, and look to see if the reasonableness standard applies.

The defendant pleaded guilty to a 5 year plea agreement, then it got changed to a 7 year agreement. Then he gets the back door justice and gets punished for crimes he was never charged with or that he admitted to, and received an 11 year 3 month sentence. That would certainly fail any reasonableness test.

The government needs to just admit that they lost the Supreme Court's ruling. What happened to the defendant was unconstitutional. The government is behaving like a bunch of sore losers. They know that the defendant has preserved his claims on all of the illegal sentencing enhancements that he received.

The government also knows that what they did to the defendant was not fair, they try to cover this all up by claiming the defendant is filing frivolous motions and engaging in name calling.

The plea agreement that Ashley signed was Void. It was void because when he actually entered the change of plea, he did not admit to the over one million dollar amount. The government stood right there in court knowing that the amount was not being admitted to by the defendant. Now they want to cry foul?

Simply put, the defendant received an illegal sentence, he has always maintained that since the change of plea hearing. He has never changed his story or his claims not one single time.

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Justice has to have the appearance of justice. In this case it does not even reasonably appear that justice was fair in this case.

It is important to remember that the Booker and Blakely courts relied, at least partially on **Jones V. United States, 526 U.S. 227 (1999)**, determining that the guidelines are unconstitutional. The argument is that the Booker case is simply a clarification of the holding in Jones, and Apprendi.

For all the reasons stated above, the defendant respectfully requests that this court order that an evidentiary hearing be held to resolve this claim as well as all of the other claims that he has brought forth in his \$2255.

RESPECTFULLY SUBMITTED

Sam Ashley

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CERTIFICATION

I do hereby certify that a copy of this motion has been sent to Asst. US Attorney James Coombe at 221 East Fourth St. Rm 400 Cincinnati Oh 45202, on this 9th day of Feb 2005

Sam Ashley